



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**WAGGONER CARR  
ATTORNEY GENERAL**

**March 14, 1966**

Honorable Wallace Shropshire    Opinion No. C-638  
County Attorney  
Travis County  
Austin, Texas

Re:    The meaning of the word  
      "default" as used in Sec-  
      tion 2 of Article 17.11 of  
      the 1966 Code of Criminal  
      procedure.

Dear Sir:

You have requested an opinion of this office concern-  
ing the time a surety will be considered to be in default on  
a bail bond under the provisions of Section 2 of Article 17.11,  
1966 Code of Criminal Procedure.

Section 2 of this Article provides as follows:

"Provided, however, any person who has  
signed as a surety on a bail bond and is in  
default thereon shall thereafter be disquali-  
fied to sign as a surety so long as he is in  
default on said bond. It shall be the duty  
of the clerk of the court wherein such surety  
is in default on a bail bond, to notify in  
writing the sheriff, chief of police, or  
other peace officer, of such default."

Section 2 of Article 277 of the old Code of Criminal  
Procedure also used the term default in the same context as  
Section 2 of Article 17.11 and the requirements of the two  
provisions are substantially identical. There are no appel-  
late decisions of this State which construe the meaning of  
the word "default" as used in Article 277 or states when a  
surety is in default on a bail bond.

In your opinion request you suggest the three follow-  
ing possibilities when a surety might be considered to be in  
default:

1.    Default occurs when the bond is forfeited  
      in accordance with Article 22.02, V.C.C.P.
2.    Default occurs when citation is issued  
      notifying the sureties that the bond has  
      been forfeited, and requiring them to ap-  
      pear and show cause why the judgment of

forfeiture should not be made final in accordance with Article 22.03, V.C.C.P.

3. Default occurs at the time when the judgment of forfeiture becomes final in accordance with Article 22.14 or Article 22.15, V.C.C.P., and the judgment thereon is unsatisfied.

It is the opinion of this office that default occurs only after the judgment of forfeiture is made final in accordance with provisions of Articles 22.14 or 22.15, 1966 Code of Criminal Procedure and the judgment thereon is unsatisfied.

The Court in Easterwood v. Willingham, 47 S.W.2d 383 (Tex.Civ.App. 1932), stated:

"The term 'default' may be defined as a failure of a party to perform a legal duty."

Default is "an omission of that which ought to be done; specifically, the omission or failure to perform a legal duty." Black's Law Dictionary, Fourth Edition, page 505.

It is only after the judgment of forfeiture becomes final that a surety has a legal duty to perform. Under the first two possibilities you pose, even though the defendant has not appeared as required, the surety may avail himself of the statutory causes which would exonerate him from any liability on the forfeiture of the defendant's bail if presented and found to be true at the show cause hearing.

#### SUMMARY

A surety will be considered to be in default on a bail bond, as the term is used in Section 2 of Article 17.11, 1966 C.C.P., only after the judgment of forfeiture has been made final in accordance with the provisions of Article 22.14 or Article 22.15, 1966 C.C.P., and the judgment is unsatisfied.

Yours very truly,

WAGGONER CARR  
Attorney General of Texas

Honorable Wallace Shropshire, page 3 (C-638)

By: Robert W. Norris  
ROBERT W. NORRIS  
Assistant Attorney General

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APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman  
Kerns B. Taylor  
Milton Richardson  
Malcolm Quick  
Edward Moffett

APPROVED FOR THE ATTORNEY GENERAL  
By: T. B. Wright